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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/648,720	08/25/2000	Mark E. Redding	230074.0228	7459
7590	06/04/2004		EXAMINER	
			BLAIR, DOUGLAS B	
			ART UNIT	PAPER NUMBER
			2142	
DATE MAILED: 06/04/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/648,720	REDDING ET AL. <i>[Signature]</i>
	<b>Examiner</b>	<b>Art Unit</b>
	Douglas B Blair	2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 16 March 2004.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-33 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Claims 1-33 are currently pending in this application.

### ***Claim Objections***

2. Claim 11 is objected to because of the following informalities: in line 3 of claim 11 one of the words “added” or “communicated” is unnecessary. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 16, 18, and 30-32 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Number 6,189,146 to Misra et al..

5. As to claim 1, Misra teaches a system for balancing a distribution of allocations for protected software over a communication network according to a license policy, the system comprising: at least one client computer coupled to the communication network for requesting authorizations to use the protected software (col. 4, lines 21-30); and a pool of license servers coupled to the communication network, each license server in the pool is programmed for managing a distribution of allocations for at least one client computer coupled to the

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communication network to use the protected software (col. 4, lines 1-14, the license servers for each server); the pool of license server including a current leader server programmed for updating the distribution of allocations to add at least one additional allocation to a particular license server if that particular license server has an insufficient number of allocations (col. 4, lines 21-30).

6. As to claim 16, Misra teaches a method for balancing a distribution of allocations for using protected software by at least one client computer coupled to a communication network, the method comprising the steps of: coupling a pool of license server to the communication network (col. 4, lines 21-30); assigning a distribution of allocations to the pool (col. 4, lines 21-30); programming each license server in the pool to manage the distribution of allocations including processing requests for authorization to use the protected software from at least one client computer coupled to the communication network; designating a current leader server from the license servers in the pool and programming the current leader for updating the distribution of allocations to add at least one additional allocation to a particular license server if that particular license server has an insufficient number of allocations in response to a request for authorization received from a client computer (col. 4, lines 21-30).

7. As to claim 18, Misra teaches a method as recited in claim 16, wherein updating the distribution of allocations includes: selecting one of the license servers in the pool as a current leader server for storing the distribution of allocations for all license servers in the pool as a current leader server for storing the distribution of allocations for all license servers in the pool and for managing a reassignment of allocations to give at least one additional allocation to a particular license server if that particular license server did not have a sufficient number of

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allocations at any time during processing of a request for authorization received from the client computer (col. 4, lines 9-48).

8. As to claim 30, Misra teaches a system as recited in claim 1, wherein each license server that is programmed for managing a distribution of allocation comprise a license server programmed to receive a request for authorization to use the protected software from a at least one client computer and to allocate authorization for each client computer from which a request is receive and for which an authorization is available (col. 4, lines 21-30).

9. As to claim 31, Misra teaches a system as recited in claim 1, wherein each license server is programmed to receive a request for authorization to use the protected software from at least one client computer and, if an insufficient number of allocations are available, for obtaining at least one allocation from the lead server (col. 4, lines 21-30).

10. As to claim 32, Misra teaches a system as recited in claim 1, wherein each license server in the pool is assigned an initial distribution of zero or more available allocations for using the protected software by the at least one client computer; and the current leader server is programmed to re-distribute one or more available allocations among the license servers in the pool (col. 11, lines 25-60).

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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12. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent

Number 6,189,146 to Misra et al. in view of U.S. Patent Number 5,752,041 to Fosdick.

13. As to claim 33, Misra teaches a system as recited in claim 1; however Misra does not explicitly teach transferring a license from one server to another and updating the local count of licenses.

Fosdick teaches a system wherein each license server in a pool is associated with a data storage device for storing a record of the number of allocations presently managed by that license server (col. 6, lines 35-60); the current leader server is programmed to request a transfer of at least one allocation from a first license server to a second license server in the pool, in the event that the second license server is managing an insufficient number of available allocations (col. 6, lines 9-34); and each license server in the pool are programmed to update the record of the number of allocations presently managed by the license server following a transfer of at least one allocation from a first license server to a second license server (col. 6, lines 35-60).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Misra regarding software licensing with the teachings of Fosdick regarding transferring a license from one server to another and updating the local count of licenses because distributed licenses reduce network traffic (Fosdick, col. 1, lines 61-67)

14. Claims 2-15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,189,146 to Misra et al. in view of U.S. Patent Number 5,752,041 to Fosdick and U.S. Patent Number 5,950,214 to Rivette et al..

15. As to claim 2, Misra teaches a system as recited in claim 1; however Misra does not teach the idea of borrowing licenses from another license server.

Fosdick teaches the idea of borrowing licenses from another licensing server to when the number of licenses falls below a threshold value (col. 6, lines 9-34).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Misra regarding software licensing with the teachings of Fosdick regarding sharing licenses between servers because distributed licenses reduce network traffic (Fosdick, col. 1, lines 61-67). However, the Misra-Fosdick combination does not teach comparing the quotient of the number of allocations in use divided by the total number and then comparing the quotient to a threshold value.

Rivette teaches comparing a quotient to a threshold value and then performing an action based on that comparison (col. 23, lines 7-38).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of the Misra-Fosdick combination regarding a licensing system with the teachings of Rivette regarding comparing a quotient to a threshold because a threshold provides a more flexible point for completing an action (col. 23, lines 7-38).

16. As to claim 3, Misra teaches a system where a current leader server further programmed for updating the distribution of allocations to add at least one additional allocation to particular license server if that particular license server did not have a sufficient number of allocations any time during processing of a request for authorization from a client computer (col. 4, lines 9-48).

17. As to claim 4, Misra teaches a system where a current leader server includes a memory for storing the distribution of allocations for all license servers in the pool (col. 4, lines 9-48).

18. As to claim 5, Fosdick teaches a system wherein if a particular license server determines that it does not have a sufficient number of allocations at any time during processing of a request for authorization received from the client computer, the current leader server is further programmed for: looking for a source of available allocations by checking a count of available allocations in a free pool, any down license servers, and the leader server; and decreasing the count of available allocations from the source of available allocations and increasing the count of available allocations for the particular license server if the source of available allocations is found (col. 6, lines 9-34).

19. As to claim 6, Fosdick teaches a system wherein a server is programmed to update a distribution of allocations in the pool to all functioning license server in the pool that are not the current leader server through a distribution criteria sync message (col. 6, lines 9-34).

20. As to claim 7, Fosdick teaches a system wherein a current leader server is programmed for storing a new distribution of allocations in response to a change distribution criteria message containing the new distribution of allocations communicated to a license server (col. 6, lines 9-34).

21. As to claim 8, Fosdick teaches a system wherein the license server that are not the current leader server are programmed for communicating the change distribution criteria message to the current leader server if the license server that are not the current leader server should receive a change distribution criteria message and the current leader server further programmed for communicating the new distribution of allocations in the pool to all functioning license servers in the pool that are not the leader server through a distribution criteria sync message (col. 6, lines 9-34).

22. As to claim 9, Misra teaches a current leader server programmed for adding allocations to a pool in response to an add allocations message containing a count of allocations to be added to a particular protected software communicated to a license server (col. 4, lines 9-48).
23. As to claim 10, it features similar limitations to claim 8 and is rejected for the same reasons as claim 8.
24. As to claim 11, Misra teaches the current leader server further programmed for adding a new license code to the pool in response to an add license code message containing a license code to be communicated to a license server (col. 4, lines 9-48).
25. As to claim 12, it features similar limitations to claim 8 and is rejected for the same reasons as claim 8.
26. As to claim 13, Misra teaches a system where the current leader server is programmed for updating the distribution of allocations to add at least one additional allocation to a particular license server if that particular license server did not have a sufficient number of allocations at any time during processing of an update message received from at least one client computer operating in fail-over mode (col. 4, lines 9-48).
27. As to claims 14 and 15, they have similar limitations as claim 5 and are rejected for the same reasons as claim 5.
28. As to claim 17, it features the same limitations as claim 2 and is rejected for the same reasons as claim 2.
29. Claims 19-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,189,146 to Misra et al. in view of U.S. Patent Number 5,752,041 to Fosdick.

30. As to claims 19 and 20, they feature the same limitations as claims 5 and 6 and are rejected for the same reasons as claims 5 and 6.

31. As to claim 21, it features similar limitations to claim 13 and is rejected for the same reasons as claim 13.

32. As to claim 22, Misra teaches a step of updating the distribution of allocations by communicating a change distribution criteria message including: communicating the change distribution criteria message to the current leader server; updating the distribution of allocations in the pool in the current leader server; and communicating the updated distribution of allocations in the pool to all other function license server in the pool (col. 4, lines 9-48).

33. As to claim 23, it has similar limitations to claim 9 and is rejected for the same reasons as claim 9.

34. As to claim 24, it features similar limitations to claim 22 and is rejected for the same reasons as claim 22.

35. As to claim 25, it features the same limitations as claim 11 and is rejected for the same reasons as claim 11.

36. As to claim 26, it features similar limitations to claim 22 and is rejected for the same reasons as claim 22.

37. As to claims 27-29, they feature the same limitations as claims 13-15 and are rejected for the same reasons as claims 13-15.

***Response to Arguments***

38. Applicant's arguments filed 3/16/2004 have been fully considered but they are not persuasive. The applicant argues that in the Misra reference the "license clearinghouse" 22 is not a license server in a pool of license servers because the "license clearinghouse" itself does not distribute licenses to clients or manage licenses for clients. The examiner disagrees with this characterization. The "license clearinghouse" does distribute and manage licenses for clients, however it does not do this directly with the clients. The claims language however does not require a direct relationship and therefore Misra is considered to teach the claimed invention as considered in the broadest interpretation. The examiner also points out that a pool is defined as "a combination of resources in a common fund or effort" and therefore the term pool in the claims does not require all of the license servers to be identical or to perform functions in an identical manner.

*Conclusion*

39. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

40. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas B Blair whose telephone number is 703-305-5267. The examiner can normally be reached on 8:30am-5pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Harvey can be reached on 703-305-9705. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3800.

Douglas Blair  
May 26, 2004

*DBB*

*Jack Harvey*  
JACK B. HARVEY  
SUPERVISORY PATENT EXAMINER